

Supreme Court, U. S.

FILED

JUN 6 1977

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

76-1414

FRANCES F. SHAND

PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

APPENDIX

**PETITION FOR WRIT OF CERTIORARI
TO REVIEW THE ORDER OF
THE UNITED STATES COURT OF APPEALS,
DISTRICT OF COLUMBIA CIRCUIT.**

FRANCES F. SHAND
3531 Freeman Road
Walnut Creek, California 94595

NATIONAL LABOR RELATIONS BOARD
REGION 20

450 GOLDEN GATE AVENUE, BOX 36047
SAN FRANCISCO, CALIFORNIA 94102

TELEPHONE 556-3197
AREA CODE 415

September 25, 1975

Mrs. Frances Shand
3531 Freeman Road
Walnut Creek, California

Re: Hospital & Institutional Workers
Union, Local 250, AFL-CIO
Case No. 20-CB-3614

Dear Mrs. Shand:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

On August 6, 1975, arbitrator Patrick J. Boner issued his decision finding that your suspension was for just cause. Your charge alleges that the Union violated the Act by defaulting in its obligation to thoroughly prepare and present your grievance to the arbitrator. However, the Board has held that while a union has the statutory duty to represent employees fairly, it has also held that negligence by a Union in processing an allegedly meritorious grievance is not a violation of the Act; poor quality representation is insufficient to support a claim of unfair representation. Therefore, even assuming that the Union was negligent in the presentation of your grievance, there is no basis for finding that the Union violated the Act. Accordingly, I am, refusing to issue complaint in this matter.

Very truly yours,
Natalie P. Allen
Regional Director.

NATIONAL LABOR RELATIONS BOARD
 OFFICE OF THE GENERAL COUNSEL
 WASHINGTON, D.C. 20570

November 10, 1975

Re: Hospital & Institutional Workers
 Union, Local 250, AFL-CIO
 Case No. 20-CB-3614

Mrs. Frances Shand
 3531 Freeman Road
 Walnut Creek, California

Dear Mrs. Shand:

Your appeal from the Regional Director's refusal to issue complaint in the captioned case has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of September 25, 1975. The arbitration proceeding appears to have been fair and regular. In your case, due process did not require that the Union provide you with a labor lawyer in the arbitration proceeding and there is no indication that the Union was unreasonable or arbitrary in not submitting all the documents you wanted introduced before the arbitrator. You have not shown that the representation the Union afforded you was based upon arbitrary, invidious or irrelevant considerations.

As for your assertion that you were denied "notes in affidavit form" by Mr. Redstrom of the Board's Regional Office, the record herein reveals that Mr. Redstrom spent more than 5 hours with you eliciting information and preparing an affidavit, which you then refused to sign because it was only random notes. *The extensive document is part of the file* and has been reviewed together with all the materials you have submitted. *After*

reviewing the entire file, we conclude that further proceedings would be unwarranted.

Very truly yours,
 John C. Miller
 Acting General Counsel
 By Robert E. Allen
 Director, Office of Appeals

**IN ARBITRATION PROCEEDING PURSUANT TO
 CURRENT COLLECTIVE BARGAINING
 AGREEMENT BETWEEN THE PARTIES**

**In the Matter of the Arbitration
 between
 KAISER FOUNDATION HOSPITALS,
 and
 HOSPITAL AND INSTITUTIONAL
 WORKERS UNION LOCAL 250**

**DECISION AND AWARD
 OF
 PATRICK J. BONER
 ARBITRATOR**

Los Gatos, California
 August 6, 1975

APPEARANCES

On behalf of the Company . . . Dennis L. Isenburg, Esq.
 On behalf of the Union. William Healy
 Grievant. Frances Shand
 Reporter. Judith A. Fuller, C.S.R.

INDEX OF WITNESSES

- 1. Chappell, John
- 2. Malone, Noreen
- 3. Pacheco, Donna
- 4. Shand, Frances

INDEX OF EXHIBITS

- Joint Exhibit 1 Master Agreement
- Employer Exhibit 1 Notice of suspension
- Employer Exhibit 2 Telegram
- Employer Exhibit 3 Letter dated 2/28/75
- Employer Exhibit 4 Letter dated 2/27/75
- Employer Exhibit 5 Letter dated 3/4/75
- Employer Exhibit 6 Letter dated 4/22/75
- Union Exhibit 1 Letter dated 4/21/75
- Union Exhibit 2 Envelope
- Union Exhibit 3 Envelope
- Union Exhibit 4 Letter to Mr. Bell

INTRODUCTION

The Hospital and Institutional Workers Union, Local 250, hereinafter referred to as the "Union," represented in these proceedings by Mr. William Healy and Kaiser Foundation Hospitals, hereinafter referred to as the "Hospital," represented in these proceedings by Mr. Dennis L. Isenburg, are signatory to a Collective Bargaining Agreement covering the period from October 27, 1974, to October 24, 1976.

The parties under the provisions of Article XXVII, Section 4, Step 4, selected Mr. Patrick J. Boner of Los Gatos, California, as the arbitrator. The parties agreed that the issue is timely, arbitrable and properly before the arbitrator.

The parties further agreed that witnesses should be sworn. Additionally, the parties agreed that the

Decision of the Arbitrator is final and binding on the parties.

One party objected to publication of the Decision and Award.

Both parties made brief opening statements.

The current Collective Bargaining Agreement was introduced into evidence and labelled as an exhibit.

BACKGROUND

The grievant, Frances Shand, was hired by Kaiser on September 13, 1967. She is a Cashier-Receptionist with a current rate of pay of \$4.6296 (that is four dollars, sixty-two cents and 9.6 mills). This is a position Grade 3.

She was suspended effective at 2:00 PM on February 24, 1975. She was off work from that time until Monday, March 10, 1975. On that date she returned to work at her regular starting time.

Her time off, for the record, was approximately nine (9) shifts of eight (8) hours each.

As a result of the above noted suspension, the Union filed a grievance and asked, as the remedy, that the grievant be returned to work and be made "whole" for the time she was not on the payroll.

The parties processed the grievance through the procedure contained in the current Agreement between the parties, but were unable to resolve the dispute.

Their inability to resolve the dispute has resulted in this arbitration and the subject matter of that dispute is the basis for this case. The parties agreed there is no question of "laches."

ISSUE

Although there was no written formal grievance in this case, the advocates for both parties and the arbitrator agreed that the issue is:

"Was the grievant suspended for just cause?"

"If not, what the remedy shall be?"

HOSPITAL POSITION

The Hospital, by examination and cross-examination of witnesses and by the introduction of documents, stated their case to be:

1. That the grievant was suspended for failure to follow the direction of her supervisor.
2. That the Hospital believes that an employee who will not follow the direction of a supervisor should not be in a pay status.
3. That the length of the suspension was determined by the grievant.
4. That the suspension came to an end when the grievant decided to have a meeting with her supervisor.
5. That, since the length of the suspension was determined by the grievant, the remedy requested, pay for time lost, should be denied.

UNION POSITION

The Union by examination and cross-examination of witnesses and the introduction of documents and a tape, stated their case to be:

1. That the actions of the grievant did not constitute insubordination.
2. That the grievant is a conscientious employee who was greatly concerned about the bills and their mailing; her concern for the hospital, the patient and lastly for herself.
3. That the hospital personnel recognized her as a fine employee — something of a "perfectionist."
4. That she may have relied, to her own detriment, on her belief that the work she was performing resulted from an order from Mr. Chappell, the Administrator.

5. That since the grievant did not attend a requested meeting with her supervisor because of very sincere motives, her actions should be examined in that light.

6. That the grievant's record should be expunged of references to the matters that gave rise to this arbitration.

7. That the grievant should be paid for the work time missed because of the suspension.

DISCUSSION AND OPINION

After a very careful examination of the complete record in this case, and with particular attention to the tape offered in evidence, it is my feeling that although the issue is a narrow one, there are many unusual aspects to it.

In most disciplinary cases, heard by this arbitrator it is a matter of examining to what extent an employee has failed to follow the accepted rules or norms of the requirements of a given job.

In the instant case, those usually expected situations are not present. Instead, we are looking at the record and actions of an employee who feels a great responsibility to the organization for which she works and further, a sincere belief that the interests of the customer must be a matter of prime concern.

Unfortunately, for her own interest, the grievant did not choose the best method of resolving the concerns she felt. As a result of her choice she was suspended for a period of nine-plus days.

As stated by the advocate for the Hospital, the length of that suspension was self-imposed but could have been self-limited. Before framing my Decision in this case, I would like to offer some recommendations to the parties. These are offered because I feel the instant case calls for something more than a mechanically correct award.

My recommendations are these:

1. That a clear-cut guideline from the Hospital be offered to the Union and the employee reaffirming function, reporting procedure and lines of authority involving the parties who were present and/or testified at the hearing.
2. That the parties jointly resolve the matter of what material is in the record of the grievant.

These recommendations are not intended to be a part of the Decision and Award in this case, but are offered as possible method to clear up the situations that brought about this arbitration.

After a careful review of the entire record in this case it is my determination that the suspension of the grievant in this case was for just cause.

Therefore, the following Decision and Award is made.

DECISION AND AWARD

The grievance is denied.

Date: August 6, 1975

PATRICK J. BONER
Arbitrator